

EXHIBIT 5

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

- - -

VIRTAMOVE CORPORATION,)
Plaintiff,)
vs.) No. 2:24-cv-00093-JRG
HEWLETT PACKARD ENTERPRSE)
COMPANY,)
Defendant.)
)
VIRTAMOVE CORPORATION,)
Plaintiff,)
vs.) No. 2:24-cv-00064-JRG
INTERNATIONAL BUSINESS)
MACHINES CORPORATION,)
Defendant.)
_____)

VIDEOTAPED DEPOSITION OF SAM MALEK
Friday, July 18, 2025

Reported By:

MICHELLE K. BAILEY, RPR, CSR No. 10713

Job No. 7478712

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PAGES 135 to 144 ARE CONFIDENTIAL AND BOUND SEPARATELY

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1 So it's your opinion that -- and I'll represent 12:15:24
2 to you, paragraph 233 -- well, actually, you can look at 12:15:28
3 it. So in Wicker opening report, paragraph 233, this is 12:15:32
4 addressing the claim element: "Wherein, the one or more 12:15:37
5 of the isolated environments are created during the 12:15:40
6 installation of the one or more applications." 12:15:43

7 Do you see that? 12:15:47

8 A. Sorry. I don't see -- are you reading from the 12:15:48
9 paragraph? 12:15:56

10 Q. So if you scroll up from paragraph 233, this 12:16:00
11 claim limitation that paragraph 233 addresses is: 12:16:03
12 "Wherein, the one or more isolated environments are 12:16:09
13 created during installation of the one or more 12:16:13
14 applications." 12:16:19

15 Right? 12:16:19

16 A. Yes. I see that. 12:16:20

17 Q. And if you look at that particular claim 12:16:21
18 limitation, the first piece of evidence Dr. Wicker cites 12:16:23
19 is, actually, with respect to V-Migrate; right? 12:16:28

20 A. Yeah. But I'm talking about a different part 12:16:30
21 of his analysis there. 12:16:33

22 Q. So my question is different. My question was, 12:16:34
23 is there any claim limitation at all in the OIN patents 12:16:39
24 where he exclusively rely on V-Maestro evidence alone? 12:16:45
25 That was my question. 12:16:49

1 A. Well, as I say here in this paragraph 104, he's 12:16:52
2 relying on V-Maestro exclusively for any automation. 12:16:55
3 Q. Is automation -- well, let me ask you that. 12:17:04
4 Which claim limitation is automation relate to 12:17:09
5 in OIN patents? 12:17:12
6 A. Well, as I say, Dr. Wicker concedes that the 12:17:14
7 only way that the recited functionalities are allegedly 12:17:17
8 automated is through V-Maestro. And paragraph 233 is an 12:17:21
9 example of that. 12:17:25
10 Q. That was not my question. My question is which 12:17:26
11 claim limitation requires the word "automation"? 12:17:28
12 MR. TONG: Objection; form. 12:17:32
13 THE WITNESS: Well, I think, as I've said, so 12:17:42
14 the, you know -- so I understand under IBM's 12:17:50
15 construction or IBM's interpretation, the claim can be 12:17:57
16 met by allowing someone, for example, a user to perform 12:18:02
17 it. Under that interpretation, Dr. Wicker hasn't really 12:18:07
18 shown any specific user performing this operation. And 12:18:12
19 under VirtaMove's proposal that this limitation must be 12:18:25
20 met, you know, independently of user interaction and the 12:18:30
21 system is configured to do it, then, you know, 12:18:36
22 Dr. Wicker is relying exclusively on V-Maestro for any 12:18:38
23 such automation. So that's that part of his report. 12:18:42
24 But I have other opinions in my report as well about 12:18:46
25 this. 12:18:49

1 BY MS. DOU: 12:18:49

2 Q. So part of your reason why you think the claim 12:18:50

3 limitation requires automation is based on VirtaMove's 12:18:53

4 proposed claim construction; right? 12:18:58

5 (Technical Interruption)

6 THE WITNESS: So I think you were asking me 12:21:47

7 questions about what Dr. Wicker says in his report. He 12:21:49

8 says in paragraph 904 of his opening report that: 12:21:52

9 "VirtaMove next suggests that it could simply stop 12:21:56

10 offering the alleged infringing V-Maestro functionality 12:22:00

11 as a non-infringing alternative." 12:22:00

12 And then he follows that by saying: "This 12:22:03

13 approach is also not acceptable." 12:22:05

14 He's agreeing that this would be a 12:22:07

15 non-infringing alternative. He's only taking issue with 12:22:09

16 whether it would be commercially acceptable or not. So 12:22:16

17 I think, you know, my understanding is that Dr. Wicker 12:22:18

18 has already agreed that using V-Migrate alone would be a 12:22:21

19 non-infringing alternative. And I've just kind of added 12:22:28

20 to that. And I discuss this in paragraph 250 of my 12:22:35

21 report. I point to various paragraphs in Dr. Wicker's 12:22:39

22 report where he's taking issue with whether using 12:22:43

23 V-Migrate alone is an acceptable non-infringing 12:22:48

24 alternative. But, you know, it's pretty clear in my 12:22:54

25 opinion that he's already agreed that V-Migrate alone 12:23:00

REPORTER'S CERTIFICATION

I, Michelle K. Bailey, Certified Shorthand Reporter, in and for the State of California, do hereby certify:

That the foregoing witness was by me duly sworn; that the deposition was then taken before me at the time and place herein set forth; that the testimony and proceedings were reported stenographically by me and later transcribed into typewriting under my direction; that the foregoing is a true record of the testimony and proceedings taken at that time.

IN WITNESS WHEREOF, I have subscribed my name this 23rd day of July, 2025.

A handwritten signature in black ink that reads "Michelle Bailey". The signature is written in a cursive, flowing style.

Michelle K. Bailey

RPR, CSR No. 10713